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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>19 March 2009</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-17</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-17</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>03/19/2009</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 17 is vague and indefinite because it recites a computer-readable program means embodied on the article of manufacture. Means plus function language represents structural components of a system and therefore it will be impossible to embed a structural component onto an article of manufacture to perform executable commands   as captured in claim 17.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-6, and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 7,213,255 to Markel et al. (Markel), in view of US Patent Publication 2001/0029523 to Mcternan et al. (Mcternan), in view of US Patent Publication 2004/0128343 to Mayer. (Mayer), in view of US Patent Publication 2004/0268410 to Barton et al. (Barton).

Regarding claim 1, Markel teaches a mass storage device (combination of 314 & 312). In addition Markel teaches a download manager (300) retrieving <u>over the network connection</u> (inherent because of the streaming source (310) one of the NTSC sources), and storing in the mass storage device (combination of 314 & 312) a portion of a first file (contents of 312) comprising video content and a second file (contents of 314) comprising an interactive element (column 4, 28-31, & 44-47).

In addition Markel teaches a presentation manager (326) (i) retrieving the portion of the first file (311) from mass storage (combination of 314 & 312), (ii) displaying with a media player application (330 (is equivalent to a media player because it is a software version of a set-top-box)) video content represented by the portion of the first file, (iii) retrieving the second file (324) and (iv) displaying with a media player application (330 (is equivalent to a media player because it is a software version of a set-top-box)) the interactive element semi-transparently over the video content ((figure 1, labels 104, & 106), & (column 1, 32-34 (teaches a transparent overlay of interactive element over video an obvious variation of semi-transparency))).

However, Markel is silent on a bandwidth measurement device determining the bandwidth of a network connection over which a content file is downloaded; the size of the portion of the first file responsive to the bandwidth determination made by the bandwidth measurement device; the download manager retriev<u>ing over the network connection</u> the remainder of the first file in response to the presentation manager displaying the retrieved portion of the first file.

Mcternan teaches a bandwidth measurement device determining the bandwidth of a network connection over which a content file is downloaded (Para. 0045, ll. 6 – 10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Markel to include a bandwidth measurement device determining the bandwidth of a network connection over which a content file is downloaded as taught by Mcternan in order to account for variation in client capabilities, thereby allowing for enhanced media presentations.

Markel and Mcternan are silent on the size of the portion of the first file responsive to the bandwidth determination made by the bandwidth measurement device; the download manager retrieving over the network connection the remainder of the first file in response to the presentation manager displaying the retrieved portion of the first file.

Meyer teaches splitting a program into at least two complementary program segments A and B and by downloading download segment A, a determination can be made of the expected available bandwidth to download program B with meets "the size of the portion of the first file responsive to the bandwidth determination made by the bandwidth measurement device" (Para. 0031, ll. 4-6, & Para. 0049, ll. 14-17).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify system of Markel and Mcternan to include the size of the portion of the first file responsive to the bandwidth determination made by the bandwidth measurement device as taught by Mayer in order to support program

distribution using partial caching, thereby providing users with a tailored quality experience despite bandwidth limitations.

Markel, Mcternan and Mayer are silent on the download manager retrieving over the network connection the remainder of the first file in response to the presentation manager displaying the retrieved portion of the first file.

Barton teaches pre-storing portions of a video at a local receiver and fetching the remainder as the viewing of the first portion begins (Para. 0041, ll. 5-6) which meets "a download manager retrieving over a network connection the remainder of the first file in response to the presentation manager displaying the retrieved portion of the first file".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, Mcternan and Mayer to include a download manager retrieving over a network connection the remainder of the first file in response to the presentation manager displaying the retrieved portion of the first file as taught by Barton in order to support subscription video-on-demand.

Regarding claim 2, Markel teaches a mass storage device (combination of 314, & 312) which meets "the client system, wherein the mass storage device comprises a redundant array of independent disks".

Regarding claim 3, Markel teaches the client system wherein the mass storage device comprises a network storage solution (combination of 314, & 312 (storage relying on capacity rather than speed)).

Regarding claim 4, Markel, Mayer, and Barton are silent on the client system, wherein the bandwidth measurement device comprises a timer.

Mcternan inherently teaches the client system, wherein the bandwidth measurement device comprises a timer (Para. 0045, II. 6 – 10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, Mayer, and Barton to include the client system, wherein the bandwidth measurement device comprises a timer as taught by Mcternan in order to account for variation in client capabilities, thereby allowing for enhanced media presentations.

Regarding claim 5, Markel, Mayer, and Barton are silent on the client system wherein the download manager and the bandwidth measurement device comprise a single process.

Mcternan teaches the client system wherein the download manager and the bandwidth measurement device comprise a single process (Para. 0045, II. 6 – 10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, Mayer, and Barton to include the client system wherein the download manager and the bandwidth measurement device comprise a single process as taught by Mcternan in order to account for variation in client capabilities, thereby allowing for enhanced media presentations.

Regarding claim 6, Markel teaches a browser used to displaying enhanced video content on client device which reads on "the client system wherein the download manager comprises a thread process" (column 7, 41-43 (Note that HTML codes are executed sequentially or as threads)).

Regarding claim 8, Markel teaches an interactive TV produce 326 comprising a software program which reads on "the client system wherein the presentation manager comprises a threaded process" (column 4, 7-8 (program codes are executed in sequence or threads)).

Regarding claim 9, Markel teaches the client system, wherein the presentation manager comprises a Windows Media Player application (330 (is equivalent to a media player because it is a software version of a set-top-box)).

5.   Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markel, in view of Mcternan, in view of Mayer, in view Barton, in view of US Patent Publication 2004/0117839 to Watson et al. (Watson).

Regarding claim 7, Markel, Mcternan, Mayer, and Barton are silent about the client system wherein the download manager comprises one of the groups consisting of an ActiveX control and a JAVA applet.

Watson teaches the client system wherein the download manager comprises one of the groups consisting of an ActiveX control and a JAVA applet (Para. 0103, entire, & figure 2, labels 150, & 160).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, Mcternan, Mayer, and Barton to include the client system wherein the download manager comprises one of the groups consisting of an ActiveX control and a JAVA applet as taught by Watson in order to provide a software player than run independently of any platform.

6.   Claims 10-11, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markel, in view of Barton, in view of US Patent 6,377,974 to Feigenbaum. (Feigenbaum).

Regarding claim 10, Markel inherently teaches (a) retrieving a first content file (contents of 312) <u>over a network connection</u> (a network connection is inherent because there is a video streaming input (310) one of the NTSC sources (column 4, 44-47)).

In addition Markel teaches (c) storing the retrieved portion of the first content file (contents of 312) in a mass storage device (combination of 314, & 312).

In addition Markel teaches (d) displaying with a media player application (330 (is equivalent to a media player because it is a software version of a set-top-box)) content represented by the portion of the first content file (figure 1, label 104).

In addition Markel teaches (e) retrieving a second file (324) from mass storage (combination of 314, & 312) representing an interactive element; (f) displaying semi-transparently over the displayed video content an interactive element represented by the second file ((figure 1, labels 104, & 106), & (column 1, 32-34 (teaches a transparent overlay of interactive element over video an obvious variation of semi-transparency))).

Markel is silent on (b) terminating retrieval of the first content file before the entire content file is retrieved; (g) retrieving, in response to step (d), the remainder of the first content file <u>over the network connection.</u>

Barton teaches pre-storing portions of a video at a local receiver and fetching the remainder as the viewing of the first portion begins (Para. 0041, ll. 5-6) which meets "(g)

retrieving, in response to step (d), the remainder of the first content file <u>over the network</u> <u>connection</u>".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, to include (g) retrieving, in response to step (d), the remainder of the first content file <u>over the network connection</u> as taught by Barton in order to support subscription video-on-demand.

Markel and Barton are silent on (b) terminating retrieval of the first content file before the entire content file is retrieved.

Feigenbaum teaches downloading a first portion of a file wherein the download process is terminated prior to the completion of the file (figure 2, steps 130, 140, 150, & 160) which meets "(b) terminating retrieval of the first content file before the entire content file is retrieved".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, and Barton to include "(b) terminating retrieval of the first content file before the entire content file is retrieved as taught by Feigenbaum in order avoid redownloading the entire file thereby allowing for resuming at the point where the download was terminated.

Regarding claim 11, Markel, and Barton, are silent on (b-a) determining the bandwidth of a network connection over which the content file is retrieved; (b-b)terminating retrieval of the content file before the entire content file is retrieved, the termination responsive to a bandwidth determination made in step (b-a).

Feigenbaum teaches downloading a first portion of a file wherein the download process is terminated prior to the completion of the file (figure 2, steps 130, 140, 150, & 160) which meets "terminating retrieval of the content file before the entire content file is retrieved, the termination responsive to a bandwidth determination made in step (b-a)" (because Feigenbaum is solving a premature download termination problem it inherently covers bandwidth issues since they also cause premature termination during downloads).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, and Barton to include terminating retrieval of the content file before the entire content file is retrieved, the termination responsive to a bandwidth determination made in step (b-a) as taught by Feigenbaum in order avoid redownloading the entire file thereby allowing for resuming at the point where the download was terminated.

Markel, Barton, and Feigenbaum are silent on (b-a) determining the bandwidth of a network connection over which the content file is retrieved.

Mcternan teaches (b-a) determining the bandwidth of a network connection over which the content file is retrieved (Para. 0045, ll. 6 – 10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Markel, Barton, and Feigenbaum to include (b-a) determining the bandwidth of a network connection over which the content file is retrieved as taught by Mcternan in order to account for variation in client capabilities, thereby allowing for enhanced media presentations.

Regarding claim 14, Markel teaches the method further comprising the step of receiving user input via the displayed interactive element (column 7, 24-25).

Regarding claim 15, Markel's teachings of step (d) and Barton's teachings of step (g) occurs substantially concurrently (see Barton Para. 0041, ll. 5-6).

Regarding claim 16, Markel teacher the method further comprising the step of displaying with a media player application (330 (is equivalent to a media player because it is a software version of a set-top-box)) content represented by the remainder of the first content file (figure 1, label 104 (contents are retrieved in sequence of frames first frames meets first portion and subsequent frames meets remaining portion)).

Regarding claim 17, Markel inherently teaches computer-readable program means for retrieving a first content file over a <u>network connection</u> (a network connection is inherent because there is a video streaming input (310) one of the NTSC sources (column 4, 44-47)).

In addition Markel teaches computer-readable program means for retrieved portion of the first content file (contents of 312) in a mass storage device (combination of 314, & 312).

In addition Markel teaches computer-readable program means for displaying with a media player application (330 (is equivalent to a media player because it is a software version of a set-top-box)) content represented by the portion of the first content file (figure 1, label 104).

In addition Markel teaches computer-readable program means for retrieving a second file (324) from mass storage (combination of 314, & 312) representing an

interactive element; computer-readable program means for displaying with a media player application semi-transparently over the displayed video content an interactive element represented by the second file ((figure 1, labels 104, & 106), & (column 1, 32-34 (teaches a transparent overlay of interactive element over video an obvious variation of semi-transparency))).

Markel is silent on computer-readable program means for terminating retrieval of the first content file before the entire content file is retrieved; and computer-readable program means for retrieving the remainder of the first content file <u>over the network connection in response to the displaying of the portion of the first content file.</u>

Barton teaches pre-storing portions of a video at a local receiver and fetching the remainder as the viewing of the first portion begins (Para. 0041, ll. 5-6) which meets "computer-readable program means for retrieving the remainder of the first content file <u>over the network connection in response to the displaying of the portion of the first content file</u>".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, to include a computer-readable program means for retrieving the remainder of the first content file <u>over the network connection in response to the displaying of the portion of the first content file</u> as taught by Barton in order to support subscription video-on-demand.

Markel and Barton are silent on computer-readable program means for terminating retrieval of the first content file before the entire content file is retrieved.

Feigenbaum teaches downloading a first portion of a file wherein the download process is terminated prior to the completion of the file (figure 2, steps 130, 140, 150, & 160) which meets "computer-readable program means for terminating retrieval of the first content file before the entire content file is retrieved".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Markel, and Barton to include computer-readable program means for terminating retrieval of the first content file before the entire content file is retrieved as taught by Feigenbaum in order avoid redownloading the entire file thereby allowing for resuming at the point where the download was terminated.

7.   Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markel, in view of Barton, in view of US Patent 6,377,974 to Feigenbaum. (Feigenbaum), in view of US Paten Publication 2003/0163702 to Vigue et al. (Vigue).

Regarding claim 12, Markel, Barton, and Feigenbaum are silent on the method wherein step (a) comprises retrieving from a peer-to-peer network content file representing video content.

Vigue teaches a peer-to-peer implementation of a computer network for data sharing which reads on "the method wherein step (a) comprises retrieving from a peer-to-peer network content file representing video content" (Para. 0029, ll. 1-4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method Markel, Barton, and Feigenbaum to include the method wherein step (a) comprises retrieving from a peer-to-peer network

content file representing video content as taught by Vigue in order to provide secured

data sharing.

8.   Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markel,

in view of Barton, in view of US Patent 6,377,974 to Feigenbaum. (Feigenbaum), in

view of Mcternan.

Regarding claim 13, Markel, Barton, and Feigenbaum are silent on the method

wherein step (a) comprises retrieving from a multicast network a content file

representing video content.

Mcternan teaches the method wherein step (a) comprises retrieving from a

multicast network a content file representing video content (figure 3, label 370).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify the method of Markel, Barton, and   Feigenbaum

to include the method wherein step (a) comprises retrieving from a multicast network a

content file representing video content as taught by Mcternan in order to account for

variation in client capabilities, thereby allowing for enhanced media presentations.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to ANTHONY BANTAMOI whose telephone number is

(571)270-3581. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on (571) 272 7296. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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